



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2021-0172]**

#### **Commercial Driver's License Skills Testing: Application for Exemption; American Association of Motor Vehicle Administrators (AAMVA)**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition; grant of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant the exemption request of the American Association of Motor Vehicle Administrators (AAMVA). AAMVA requested a multi-year exemption on behalf of the State Driver Licensing Agencies (SDLAs) in Maryland, New Hampshire, and Virginia to allow the three States to continue using revised Commercial Driver's License (CDL) pre-trip vehicle inspection and revised control skills test procedures following the completion of field tests conducted under a waiver granted by the Federal Motor Carrier Safety Administration (FMCSA). AAMVA believes that the requested exemption would enable these States to continue operating under the pilot model without the burden of reverting to the current CDL test model generating costs and delays associated with the re-configuration of testing locations and retraining of CDL test examiners. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**DATES:** The exemption is effective February 22, 2022, and expires on February 22, 2027.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

**Viewing Comments and Documents**

To view comments, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number “FMCSA-2021-0172” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click “Browse Comments.”

To view documents mentioned in this notice as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number “FMCSA-2021-0172” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

**II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been

conducted. The Agency must also provide an opportunity for public comment on the request.

FMCSA reviews safety analyses and public comments submitted to the Agency and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Background**

#### ***Current Regulatory Requirements***

The CDL requirements in 49 CFR part 383, subpart G, Required Knowledge and Skills, specifically section 49 CFR 383.133(c)(1) and (2), require the following: *Test methods*: (1) a State must develop, administer and score the skills tests based solely on the information and standards contained in the driver and examiner manuals referred to in § 383.131(a) and (b); and (2) a State must use the standardized scores and instructions for administering the tests contained in the examiner manual referred to in § 383.131(b).

#### ***Applicant's Request***

On October 25, 2021, the American Association of Motor Vehicle Administrators (AAMVA) requested that FMCSA consider granting SDLAs in Maryland, New Hampshire, and Virginia (the pilot States) a multi-year exemption to allow these States to continue using revised CDL vehicle inspection and revised control skills procedures they had previously evaluated during field tests covered by a waiver from FMCSA. The requested exemption would permit these States to continue CDL testing without the

burden of reverting back to the older CDL test model which would generate costs and delays associated with re-configuration of testing locations and retraining of CDL test examiners.

Previously, AAMVA requested a 90-day waiver from 49 CFR 383.133 to enable the pilot States to complete field tests of the new CDL skills test procedures. FMCSA determined that the waiver achieved an equivalent level of safety to the current regulations and therefore granted the request for the period of June 1, 2021, through September 1, 2021, for the first round of field tests; the Agency granted a separate waiver to cover additional field tests through December 1, 2021. FMCSA subsequently granted another waiver, effective through February 22, 2022, to avoid requiring the three States to revert to the current skills test procedures while the Agency considered the multi-year exemption.

In its current request, AAMVA is seeking a multi-year exemption to allow Maryland, New Hampshire, and Virginia to continue using the revised CDL vehicle inspection and revised control skills procedures once the field test waiver period has concluded. According to AAMVA, this exemption would permit the pilot States to continue CDL testing without the burden of reverting back to the older CDL test model which would generate costs and delays associated with re-configuration of testing locations and retraining of CDL examiners.

AAMVA notes that it would seem a sound action to allow the pilot States to continue operating under the pilot model, and this exemption period, if granted, would also allow continued use of the revised testing system while AAMVA and FMCSA analyze the field test results and determine if any additional adjustments warrant further review by the Agency and testing by these pilot States. If the Agency adopts the modernized test, this exemption will minimize the back-and-forth and confusion of rotating between CDL test models in the pilot States, and if the FMCSA does not accept

the modernized test, the States would revert to the current system and will require up to 30 days to transition and notify industry of the return to the current CDL test model.

#### **IV. Method to Ensure an Equivalent or Greater Level of Safety**

In granting AAMVA's original waiver request from 49 CFR 383.133, FMCSA determined that a waiver of the traditional pre-trip inspection and basic vehicle control skills testing requirements would not have an adverse impact on safety because the revised skills test would provide a comparable level of rigor as the current tests to ensure that participating CDL applicants demonstrate a level of knowledge and skills required to operate CMVs safely. The tests would be administered in a controlled setting, located within the pilot States' skills testing facilities. All other safety requirements, such as requiring the applicant to pass the traditional on-road test segment of the skills test, would continue to apply. In addition, the pilot States would be allowed to administer the revised examinations only to applicants who are domiciled in their respective States. The pilot States would continue to be prohibited from issuing CDLs to field test applicants unless the applicant passes all the required segments of the skills test. Collectively, these measures help ensure the requisite level of safety is achieved.

#### **V. Public Comments**

On December 9, 2021, published notice of this application and requested public comment [86 FR 70161]. The Agency received two comments supporting the AAMVA request; no comments were filed in opposition. The Commercial Vehicle Training Association (CVTA) stated that the exemption would provide a stable field-testing environment while the modernized framework is developed, analyzed, and adjusted as needed. CVTA added that as noted in the 90-day waiver determination previously issued by the FMCSA on August 31, the revised CDL vehicle inspection and revised control skills testing protocol, combined with the conditions set forth in the Agency's waiver determination achieve a level of safety equivalent to testing under existing protocols.

CVTA added that it would be prudent to allow the pilot states to continue operating under the pilot model, as the exemption period would also allow for continued use of the revised testing system while AAMVA and FMCSA analyze the field test results and determine if any additional adjustments warrant further review by the Agency and testing by these pilot states.

The Virginia Department of Motor Vehicles (VA DMV) echoed support:

The VA DMV currently has four test sites participating in the modified CDL testing program. The preliminary data is positive, and VA DMV hopes to have the opportunity to continue to collect all relevant data for use by FMCSA in making future determinations regarding CDL testing. Pursuant to VA DMV's participation in the pilot program, valuable information has been gathered on these modernized CDL testing procedures. To date, these field-testing operations have gone smoothly, and VA DMV continues to receive positive feedback from our participation. Accordingly, VA DMV believes that further implementation of the modernized CDL testing procedures should be considered as part of this pilot program and beyond.

## **VI. FMCSA Safety Analysis and Decision**

FMCSA has evaluated the AAMVA application and the public comments and decided to grant the exemption. The Agency had originally provided AAMVA waivers to support two phases of data collection through December 1, 2021. As discussed above, an additional waiver was provided to avoid requiring the pilot States to revert to the current test procedure while the Agency considered AAMVA's exemption application. This waiver provided regulatory relief through February 22, 2022. In reviewing AAMVA's waiver request, FMCSA evaluated 49 CFR 383.133 and determined that a waiver of the traditional pre-trip vehicle inspection and basic vehicle control skills testing requirements would not have an adverse impact on safety because applicants will continue to be required to pass the revised version of the pre-trip inspection and basic vehicle control skills test segments which provide a comparable level of rigor compared to the traditional test. The revised testing procedures would be administered in a controlled setting and located within the same skills testing facility used for the traditional test. Those considerations are applicable to AAMVA's request for exemption.

FMCSA concurs with the comments filed in support of the AAMVA request from CVTA and the VA DMV. For these reasons, the Agency grants AAMVA's exemption from 49 CFR 383.133, subject to the terms and conditions in this **Federal Register** notice.

## Exemption

### 1. Period of the Exemption

This exemption from the requirements of 49 CFR 383.133(c)(1)(2) is granted for the period from 12:01 a.m., February 22, 2022, through 11:59 p.m., [INSERT DATE FIVE YEARS AFTER FEBRUARY 22, 2022].

### 2. Scope of Exemption

This exemption is granted to Maryland, New Hampshire, and Virginia and is limited to the provisions of 49 CFR 383.133(c)(1) and (2).

### 3. Terms and Conditions

- a. States operating under this exemption must comply with all other applicable provisions of the FMCSRs.
- b. The revised testing procedures must be administered in a controlled setting and located within the same skills testing facility used for the traditional test.

### 4. Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

### 5. Notification to FMCSA

States using this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any CMV drivers issued CDLs who are operating under the terms of this exemption. Notifications filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

The notification must include the following information:

- a. Name of Exemption: “AAMVA SDLA Pilot”
- b. Date of the accident,



- c. City or town, and State, in which the accident occurred, or closest to the accident scene,
  - d. Name of the CDL examiner;
  - e. CLP holder's name and CLP number and State of issuance
  - f. Vehicle number and State license plate number,
  - g. Number of individuals suffering physical injury,
  - h. Number of fatalities,
  - i. The police-reported cause of the accident,
  - j. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
  - k. The driver's total driving time and total on-duty time prior to the accident.
6. Termination

FMCSA expects the States of Maryland, New Hampshire and Virginia will continue to maintain their safety record while operating under this exemption. However, should safety be compromised, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

**Robin Hutcheson,**  
*Acting Administrator.*

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